



L. H. Fuchs
Executive Director

STATE OF FLORIDA
DEPARTMENT OF REVENUE

TALLAHASSEE, FLORIDA 32399-0100

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April 6, 1994

Ms. Mary Lou Benzel
Contracting Officer
Services Acquisition Center
General Services Administration
Federal Supply Service
Washington, D.C. 20406

Dear Ms. Benzel:

Your letter to Mr. John R. Everton of our Department has been referred to me for reply. In your letter you asked for the State's approval for tax exempt use of the Federal Government commercial credit card by Federal employees in purchasing items under \$25,000 for official use only. The card is called an I.M.P.A.C. (International Merchant Purchase Authorization Card) VISA Card. The bills resulting from the use of the cards are paid directly by the United States Government. The card is designed with specific codes written within the first four digits of the card number which identify it as a Federal government purchase. Also, "U.S. Government Tax Exempt" and "For Official Use Only" is printed on the face of the card.

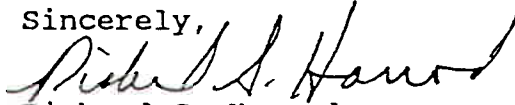
Rule 12A-1.001(9), F.A.C., provides that sales made directly to the United States Government are exempt from tax. However, paragraph (d) of this rule subsection states that vendors are required to document exempt sales made to Federal employees. Paragraph (d) goes on to provide a suggested format to be used by Federal employees when making tax exempt purchases from Florida vendors on behalf of their Federal employer.

If the I.M.P.A.C. VISA card is used in conjunction with the suggested format in the above cited rule, purchases by United States Government employees from Florida vendors will be exempt from tax. Enclosed is a copy of Rule 12A-1.001, F.A.C., for your review.

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Thank you for taking the time to contact us with your concerns. If I can be of further assistance to you, please advise.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard S. Harrod". The signature is fluid and cursive, with the first name "Richard" and last name "Harrod" clearly distinguishable.

Richard S. Harrod
Technical Assistant

RSH/h
Enclosure
Control No. 14711
EDC No. 6694
cc: Mr. L. H. Fuchs

12A-1.001 Specific Exemptions. Rulemaking power, rules promulgated by the Department of Revenue cannot be construed to extend exemptions beyond the scope of those intended by the statutes.

(1) **ADMISSIONS.** See Rule 12A-1.005.

(2) **BIBLES**

(a) Bibles, hymn books, prayer books and religious publications similar thereto, altar paraphernalia, sacramental chalices and like church service and ceremonial raiment and equipment are exempt. (See Rule 12A-1.008(11), F.A.C., for sale or purchase of religious publications.)

(b) Christian Science reading rooms are allowed to sell Bible and religious publications and literature tax exempt.

(c) A book of sermons does not fall within the specific exemptions provided under Rule 12A-1.001 and the sale thereof is taxable.

(3) **RELIGIOUS, EDUCATIONAL, CHARITABLE, VETERANS' AND SCIENTIFIC ORGANIZATIONS, FEDERAL AND STATE CHARTERED CREDIT UNIONS, FLORIDA RETIRED EDUCATORS ASSOCIATION AND LOCAL CHAPTERS, AND ORGANIZATIONS PROVIDING SPECIAL EDUCATIONAL AND SOCIAL BENEFITS TO MINORS.**

(a) A sale or lease directly to or sales or leases of tangible personal property by churches, or a sale or lease directly to nonprofit religious, nonprofit educational, nonprofit charitable institutions, and veterans' organizations, for use in the course of their customary nonprofit religious, nonprofit educational, nonprofit charitable activities, and for use by veterans' organizations, including church cemeteries, are exempt from the tax imposed by Part I, Chapter 212, F.S. Also exempt are scientific organizations and organizations providing special educational and social benefits to minors; State Theater Program Facilities; Florida Retired Educators Association; and certain nonprofit corporations qualified as homes for the aged or licensed as a nursing home or hospice. However, such institutions or organizations desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption, and payment must be made directly to the dealer by the exempt entity. See subparagraph (9)(d)2. of this rule for a suggested document to be provided the dealer by an employee who has been authorized to make purchases on behalf of a nonprofit organization when payments are made directly to the dealer by the exempt entity. This exemption shall not inure to any transaction otherwise taxable when payment is made by an exempt entity's employee by any means, including but not limited to, cash, check, or credit card, when that employee is subsequently reimbursed by the exempt entity. See Rules 12A-1.038 and 12A-1.039, F.A.C.

(b) Sales or rentals of tangible personal property, rentals or leases of transient rental accommodations, rentals or leases of real property, rentals or leases of parking, docking, or tie down spaces, admissions, or other transactions subject to the tax imposed by Part I, Chapter 212, F.S., made by exempt entities, with the exception of sales or leases of tangible personal property by churches, are taxable. Such entities are required to register in the same manner as other dealers and collect and remit tax on transactions which are subject to the tax imposed by Part I, Chapter 212, F.S. For admission charges imposed by not-for-profit sponsoring organizations qualifying under the provisions of s. 501(c)(3) of the U.S. Internal Revenue Code, see Rule 12A-1.005(3)(g), F.A.C.

(c) "Church" means a religious institution having an established physical place of worship where persons regularly assemble for worship and instruction for religious purposes. Religious organizations whose functions are radio or television broadcasting or those organizations conducting services for short periods of time at temporary locations, and religious associations that provide administrative functions only, are not considered to be churches.

(d) "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on. The term "religious institutions" includes:

1. Nonprofit corporations, the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees.
2. State, district, or other governing or administrative offices whose function is to assist or regulate the customary activities of religious organizations or members within the state or district organization.
3. Any corporation qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code, 1986, as amended, that owns and operates a Florida television station of which 90 percent of the station's programming consists of programs of a religious nature. In addition, in excess of 50 percent of the financial support for the corporation, exclusive of receipts for broadcasting from other nonprofit organizations, must come from contributions from the general public.

(e) Furniture purchased by a church for the parsonage, rectory, or church home for the pastor with title to such furniture remaining in the name of the church is exempt.

(f) Nonprofit educational institutions must hold consumer's certificates of exemption in order to be exempt from payment of tax on materials and supplies for

schools which are purchased for use by them in their customary educational activities. See Rules 12A-1.038 and 12A-1.039, F.A.C.

1. "Educational institutions" shall mean state tax supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, State Department of Education, Florida Council of Independent Schools, or the Florida Association of Christian Colleges and Schools, Inc., or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association or the American Dental Association.

2. The term "educational institutions" includes any educational television or radio network or system established pursuant to s. 229.805, F.S., or s. 229.8051, F.S., and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3), United States Internal Revenue Code.

3. The term "educational institutions" shall also include private nonprofit organizations whose purpose is to raise funds for schools teaching grades kindergarten through high school, colleges, and universities.

4. The term "educational institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members.

5. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and are eligible for exemption.

6. The term "educational institutions" includes any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

(g)1. "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code, 1954, as amended, and other nonprofit entities, whose sole or primary function is providing or raising funds for organizations providing one or more of the following services, if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

- a. Medical aid for the relief of disease, injury, or disability;
- b. Regular provision of physical necessities such as food, clothing, or shelter;
- c. Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;
- d. Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;
- e. Medical research for the relief of disease, injury, or disability;
- f. Legal services; or
- g. Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals.

2. Charitable institutions also include groups providing volunteer manpower to organizations designated as charitable institutions hereunder.

3.a. For the purpose of this subsection the following terms and phrases shall have the meaning ascribed to them except when the context clearly indicates a different meaning:

I. "Persons unable to pay" means persons whose annual income is 150 percent or less of the current Federal Poverty Guidelines or whose uncompensated hospital charges exceed 25 percent of their annual family income for the preceding 12 months. A charity day shall be computed from the amount of uncompensated services to persons unable to pay. However, in no case shall any of the hospital's charges for an individual or family whose income exceeds four (4) times the Federal Poverty Level for a family of four be considered charity days.

II. Example: The Smith family (family of four) whose annual family income for 1986 was \$20,000 had a catastrophic illness affect one of their children. The hospital bill which their insurance did not cover amounted to \$7,000, which represented thirty-five (35) percent of their current salary.

b. The hospital may include those days stayed at the hospital by the child as a charity day if the outstanding balance is uncollectable. The hospital may include this total even though the family's income exceeds the Federal Poverty Level by over 170 percent because the uncompensated portion of the hospital bill exceeds 25 percent of the family's income.

c. "Substantially reduced cost" means the normal charge diminished in an amount of considerable quantity.

d. "Sole or primary function" means that a charitable organization, excluding hospitals, must establish and support its function as providing or raising funds for services as outlined in subparagraphs 1. and 2. above, by expending in excess of 50.0 percent of the charitable organization's expenditures towards referenced charitable concerns, within the charitable organization's most recent fiscal year.

4.a. A "reasonable percentage" of the charitable services provided without cost to those unable to pay for institutions, other than hospitals, will be determined by the particular circumstances of each institution.

b. For hospitals, meaning only those institutions as defined in Part I, Chapter 395, F.S., and subject to the licensing requirements of Part I, Chapter 395, F.S., a reasonable percentage of charitable services provided without cost to those unable to pay shall be computed by the hospital, using one of the following methods:

I. The ratio of uncompensated charity days and medicaid days (numerator) compared to total acute care inpatient days (denominator), should be greater than or equal to 2.5 percent.

II. The ratio of uncompensated charity days and medicaid days (numerator) compared to total acute care inpatient days minus medicare days (denominator) shall be greater than or equal to 5 percent. These figures used to compute charity days, medicaid days, total acute care inpatient days, and medicare days shall be those reported to and accepted by the Health Care Cost Containment Board.

(h) Political subdivisions of the state and public libraries which qualify for and maintain a current sales tax exemption certificate under s. 212.08(6) or (7), F.S., shall utilize their certificates to purchase, with funds provided by the following groups, equipment, supplies, and items necessary for the operation of the group or organization:

1. School districts shall purchase necessary goods and services requested by parent-teacher organizations.

2. Counties and municipalities shall purchase necessary goods and services requested by REACT groups, neighborhood crime watch groups, and state or locally recognized organizations solely engaged in youth activities identical to those discussed in s. 212.08(7)(n), F.S.

3. Public libraries shall purchase necessary goods and services requested by groups solely engaged in fund-raising activities for such libraries.

(i) A sale or lease directly to or by a nonprofit corporation which holds a current exemption from federal corporate income tax pursuant to s. 501(c)(3), United States Internal Revenue Code, 1954, as amended, and which either qualifies as a home for the aged pursuant to s. 196.1975(2), F.S., or is licensed as a nursing home or hospice under the provisions of Chapter 400, F.S., is exempt from the tax imposed by Part I, Chapter 212, F.S., providing such entity holds a consumer's certificate of exemption. See Rules 12A-1.038 and 12A-1.039, F.A.C.

(j) Sales or leases to the state headquarters of veterans' organizations and the state headquarters of their auxiliaries, when used in carrying out their customary veterans organization activities, are exempt from payment of the tax imposed by Part I, Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. If the organization or its auxiliary does not maintain a permanent state headquarters, the transactions involving sales or leases used to maintain the office of the highest ranking state official are exempt. See Rules 12A-1.038 and 12A-1.039, F.A.C. "Veterans' organizations" means nationally chartered or recognized veterans' organizations, including, but not limited to, Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., and the Disabled American Veterans, Department of Florida, Inc., which hold current exemptions from federal income tax under s. 501(c)(4) or s. 501(c)(19) of the Internal Revenue Code.

(k)1. The term "scientific organizations" means scientific organizations in Florida holding a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. This term also means organizations whose purpose is to protect air and water quality or protect wildlife in Florida and which hold current exemptions from the federal income tax under s. 501(c)(3) of the Internal Revenue Code.

2. Sales or leases directly to nonprofit scientific organizations are exempt from the tax imposed by Part I, Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. See Rules 12A-1.038 and 12A-1.039, F.A.C.

(l) A chamber of commerce is not entitled to exemption on its purchases as it is not a religious, educational, or charitable institution. The funds derived from the cities and counties by taxation paid to the chamber of commerce do not exempt it on the expenditure of those funds unless the purchases involved are made directly by the city or county.

(m) Unless qualified as hereinbefore provided, civic, commercial, cooperative, fraternal, social, labor, and veterans' organizations are not exempt organizations under Part I, Chapter 212, F.S. Sales and rentals made to or by them are taxable in the same manner as those made to or by other "dealers".

(n) Sales to or purchases by federally chartered and state chartered credit unions are exempt from the tax imposed by Part I, Chapter 212, F.S. Each credit union claiming the exemption should apply to the Department for a consumer's certificate of exemption.

(o) Nonprofit organizations incorporated in accordance with Chapter 617, F.S., which have qualified under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which have been designated as State Theater Program Facilities as provided in s. 265.287, F.S., shall be exempt from any tax imposed by Part I, Chapter 212, F.S.

(p) Sales to or purchases by the Florida Retired Educators Association and Local Chapters of office supplies, equipment, and publications only are exempt from tax imposed by Part I, Chapter 212, F.S. See Rules 12A-1.038 and 12A-1.039, F.A.C.

(q) Nonprofit organizations providing special educational, cultural, recreational, and social benefits to minors

which are incorporated pursuant to Chapter 617, F.S., or which hold a current exemption from federal corporate income tax pursuant to s. 501(c)(3) of the United States Internal Revenue Code whose primary purpose is providing activities which contribute to the development of good character, good sportsmanship, or to the educational or cultural development of minors are exempt from the tax imposed by Part I, Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. (See Rules 12A-1.038 and 12A-1.039, F.A.C.) This exemption is extended only to that level of the organization that has a salaried executive officer or an elected non-salaried executive officer.

(r) Sales to nonprofit corporations which hold a current exemption from federal corporate income tax pursuant to s. 501(c)(3), United States Internal Revenue Code, 1954, as amended, whose primary purpose is to raise money for military museums are exempt from the payment of the tax imposed by Part I, Chapter 212, F.S., providing such nonprofit corporations hold a consumer's certificate of exemption. See Rules 12A-1.038 and 12A-1.039 F.A.C.

(4) **DRUGS.** Drugs and medicines are exempt. Certain disability appliances are also exempt. (See Rules 12A-1.020, 12A-1.021.)

(5) **FERTILIZERS, INSECTICIDES, FUNGICIDES.**

(a) Fertilizers (including peat, topsoil, and manure, but not fill dirt), insecticides, pesticides, fungicides, herbicides and weed killers used for application on or in the cultivation of crops, groves and home vegetable gardens or by commercial nurserymen are exempt. These exemptions shall not be allowed unless the purchaser furnishes the seller a certificate stating that the item to be exempted is to be used exclusively for one of the foregoing purposes on a farm. When these items are used on lawns, golf courses, shrubbery, ornamentals, flower gardens, or for any purpose other than one of those specifically named herein as exempt, they are taxable. The sale of fill dirt is taxable.

(b) Insecticides, pesticides and fungicides, including disinfectants used in dairy barns or on poultry farms for the purpose of protecting cows or poultry or used directly on livestock, are exempt.

(c) Sales of the items referred to in paragraph (a) above to commercial farm or grove caretakers, or to cooperatives or to anyone else for use on farms are exempt. (See Rules 12A-1.038 and 12A-1.039.)

(6) **FISHERIES**

(a) Nets and materials, parts and labor used in the repair thereof, are exempt when used exclusively by commercial fishermen. (Sponge fishermen qualify as commercial fishermen.) To purchase such nets tax exempt, a certificate in substantial conformity with the certificate suggested in Rule 12A-1.039 must be executed.

(b) The sale of fuels, vessels, and equipment, including but not limited to, materials, parts and labor used in the repair and maintenance of such ships and equipment, are taxable to the extent provided in Section 212.08(4) and (8), F.S. Items such as cleaning materials, lubricating oils and greases, ice, fish bait, charts, foul weather gear, gloves, boots, rain clothing, rope, fishing tackle, and logs are taxable to the extent provided in Rule 12A-1.064, F.A.C., when purchased by commercial fisheries and commercial fishermen to fulfill the purpose for which the vessel is designed. Bait purchased by commercial fishermen which is used solely for the entrapment of stone crabs and blue crabs is specifically exempt.

(c) Charter boats, party boats, pleasure fishing boats, and equipment, materials, parts and labor used in the repair and maintenance of such boats and equipment are taxable.

(d) Lumber, rope and plastic floats used in the construction of crawfish traps are taxable.

(e) The breeding and raising of fish constitutes an agricultural project. Equipment and supplies used for such purposes are subject to tax in the same manner as any other agricultural activity. (See Rule 12A-1.087.)

(7) **FUELS.** Fuels used by public or private utilities, including municipal corporations and rural cooperative associations, in generating electric power or energy for sale to the general public are exempt from all taxes imposed under Chapter 212, F.S. (For other exempt and taxable fuels, see Rule 12A-1.059.)

(8) **GASES.** Gases used for medical or therapeutic purposes are exempt. For taxable gases see Rule 12A-1.015.

(9) **GOVERNMENTAL UNITS.**

(a) All sales made directly to the United States Government, a state, or any county, municipality, or political subdivision of a state are exempt, except machines, equipment, parts, and accessories therefor used in the generation, transmission, or distribution of electricity. Except for purchases by employees of the United States Government, this exemption is not available for any taxable transaction when payment is made by a governmental employee by use of personal funds, including cash, checks, or credit cards, when the employee is subsequently reimbursed by the governmental entity. Payment must be made directly to the dealer by the governmental entity of a state, or any county, municipality, or political subdivision of a state. Purchases made by Federal employees on behalf of their agency are exempt even though the employee is subsequently reimbursed by the agency. Such governmental entities desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption (see Rules 12A-1.038 and 12A-1.039, F.A.C.). The exemption provided in this subsection shall be strictly defined, limited, and applied to each entity as provided herein.

(b) Sales of machines and equipment and parts and accessories therefor for generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision or municipality in this state shall

be subject to the tax except sales, rental, use, consumption, or storage for which bonds or revenue certificates are validated on or before January 1, 1973, for transmission or distribution expansion only. See s. 212.08(5)(c), F.S.

(c) Fire fighting and rescue service equipment and supplies purchased by volunteer fire departments, duly chartered under the Florida Statutes as corporations not for profit, are exempt.

(d) Vendors are required to document exempt sales. Federal employees, other government employees, and employees of nonprofit organizations described in subsection (3) of this Rule shall provide the vendor with proper documentation of the exempt nature of the sale.

1. A suggested format of the document to be provided by Federal employees to their vendors is the following.

FEDERAL EMPLOYEE'S CERTIFICATE

DATE

SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

The undersigned hereby swears or affirms that he or she is an employee of the Federal agency identified below and that the purchase or lease of tangible personal property or services or purchases of lease tangible personal property or services or the rental of living accommodations on _____ (DATE[S]) from the business identified above is in pursuit of his or her employer's affairs. The undersigned further swears or affirms that the Government of the United States either will pay the seller directly, or will provide reimbursement to the employee for the actual cost of the purchase or lease of tangible personal property, services, or sleeping accommodations made on this date(s).

SIGNATURE OF EMPLOYEE

NAME OF FEDERAL AGENCY

ADDRESS OF FEDERAL AGENCY

THIS CERTIFICATE MAY NOT BE USED TO MAKE EXEMPT PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL EMPLOYED BY A UNITED STATES GOVERNMENTAL AGENCY. PROPER IDENTIFICATION IS REQUIRED BEFORE THIS CERTIFICATE MAY BE ACCEPTED BY THE SELLER.

2. A suggested format of the document to be provided by other government employees or employees of nonprofit organizations to their vendors is the following.

EMPLOYER'S AUTHORIZATION TO MAKE PURCHASES ON BEHALF OF AN EXEMPT GOVERNMENTAL OR NONPROFIT ORGANIZATION

DATE

TO: _____
SELLING DEALER'S NAME

SELLING DEALER'S ADDRESS

The undersigned hereby affirms that:

_____ (INDIVIDUAL'S NAME) is a representative of the exempt governmental or nonprofit organization identified below and that the purchase or lease of tangible personal property or services or the rental of living accommodations made on _____ (DATE[S]) from the business identified above is for use by the exempt governmental or nonprofit organization identified below.

The undersigned further swears or affirms that the charges for the purchase or lease or tangible personal property or services or the rental of living accommodations from the dealer identified above will be billed to and paid directly by the exempt governmental or nonprofit organization. _____

SALES AND USE TAX

(R. 6/93)

AUTHORIZED SIGNATURE ON BEHALF OF EXEMPT ENTITY

NAME OF EXEMPT ENTITY

ADDRESS OF EXEMPT ENTITY

CONSUMER'S CERTIFICATE OF EXEMPTION NUMBER

THIS CERTIFICATE MAY NOT BE USED TO MAKE PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL REPRESENTING THE EXEMPT ENTITY IDENTIFIED ABOVE.

(10) GROCERIES. See Rule 12A-1.011, F.A.C.

(11) HOSPITALS. Room charges and meals furnished to patients or inmates as a part of the room charges are exempt, as are rooms and meals furnished employees under their employment contract. This rule also applies to institutions designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated, or for any reason dependent upon special care or attention.

(12) NEWSPAPERS, MAGAZINES AND PERIODICALS. Receipts from the sale of newspapers are exempt. Press clipping services are exempt. Effective July 1, 1987, subscriptions to magazines and periodicals are taxable. Likewise, other sales of magazines and periodicals are taxable. (See Rule 12A-1.008, F.A.C.)

(13) RADIO AND TELEVISION STATIONS.

(a) All charges for services rendered by radio and television stations, including line charges, talent fees, or license fees, are exempt. All charges to radio and television stations for license fees and charges for raw and processed films, video tapes, and transcriptions for use in producing radio or television broadcasts, are exempt.

(b) Radio and television equipment, including expendable items, parts, accessories, and supplies are taxable.

(c) Effective July 1, 1990, the charge for wired music service is taxable. See Rule 12A-1.046, F.A.C.

(d) The sale of an advertising slide for use in a television broadcast and the art work pertaining to its production are taxable.

(14) SAFETY DEPOSIT BOXES. The rental of safety deposit boxes is exempt.

(15) SCHOOLS AND SCHOOLBOOKS.

(a) The sale of schoolbooks, including printed textbooks and workbooks, containing printed instructional material, and questions and answers for school purposes used in regularly prescribed courses of study in public, parochial or nonprofit private schools grades K through 12 are exempt. Schools as used herein shall mean tax supported or parochial, church, and nonprofit private schools conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, State Department of Education, the Florida Council of Independent Schools, or Florida Association of Christian Colleges and Schools, Inc. Yearbooks, magazines, directories, bulletins, papers and similar publications distributed by educational institutions to the students are classified as schoolbooks and are treated in the same manner as other schoolbooks. Sales of all such items by junior colleges and institutions of higher learning, as well as by newsstands, and sales to the general public are taxable. Sales of school materials and supplies are taxable regardless of by whom sold; however, for the sake of convenience, schools grades K through 12 and their respective P.T.A.'s or P.T.O.'s have been granted the privilege of paying tax to their suppliers on school materials and supplies that they purchase for resale to students and the tax is passed on to the student as part of the selling price. All others making sales of school supplies and materials are required to register as dealers and collect the tax thereon from the purchaser.

(b) The sale of photographs by photographers for use in students' yearbooks is taxable if the purchase and payment are made by the student. They are exempt only if payment is made from school funds.

(c) Band uniforms, athletic uniforms and equipment, caps and gowns, and other items of clothing bought and paid for by a school with ownership and title remaining in the school are exempt.

(d)1. Tangible personal property sold outright or rented through the school to students is taxable based on delivered cost to the school or on the amount charged the student upon sale or rental. Student photographs, candies, confections, and novelties sold to students or the public for fund raising purposes come within this rule.

2. Food and beverages sold through vending machines located in the student lunchrooms or dining rooms of schools grades K through 12 are exempt. Sales of foods and beverages through vending machines that are located elsewhere on the school's premises, other than the student

lunchroom or dining room, are taxable. Schools grades K through 12 and their respective P.T.A.'s or P.T.O.'s which operate food and beverage vending machines selling taxable items may pay the tax to their suppliers on the vended items or remit the tax to the Department on the total receipts from each machine. See Rule 12A-1.044, F.A.C.

(e) The same tax regulations which apply to schools also apply to parent-teacher associations. Parent-teacher associations may qualify for exemption as educational institutions and may make tax exempt purchases of items used in

their customary activities or items donated by the associations to the schools. Parent-teacher associations holding fund raising events such as spring festivals, fun houses, and games where prizes are given away shall pay the tax on all materials used, including the prizes awarded.

(16) SEEDS. Field and garden seeds sold for the purpose of growing vegetables and fruit for human consumption are exempt. Flower seeds are taxable except when sold to commercial nurserymen or by the producer as an agricultural product.

(17) SERVICE TRANSACTIONS

(a) Professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made are exempt.

(b) The furnishing of information, including a written report to a person of a personal or individual nature and which is not or may not be substantially incorporated in reports furnished to other persons, is not an information service within the meaning of the law and is exempt. In such cases the person furnishing the information is required to pay the tax on the purchases of tangible personal property used by him in connection therewith.

(c)1. An interior decorator's so-called fee is taxable as a part of the selling price under Section 212.02(17), F.S., or as a part of the cost price under Section 212.02(4), F.S., and cannot be exempted as a professional or personal service charge when the transaction involves the sale of tangible personal property. This is true when the so-called fee is paid in the form of a trade discount, as is the case when a supplier grants the decorator a trade discount and the decorator in turn bills his client for the full list price. The so-called decorator fee is also taxable when it appears as an amount added to the decorator's cost when he bills his client for tangible personal property on a cost plus basis.

2. If the decorator's fee is solely for designing the interior and exterior decorative scheme or for advising his clients and recommending colors, paints, wallpaper, fabrics, brands, sources of supply, etc., and there is no sale of tangible personal property involved, then such fee would be exempt as a professional or personal service transaction.

3. In some instances, the decorator may receive a fixed sum, which is not in any way contingent upon the sale of tangible personal property, as a so-called decorator fee. Then, in other completely unrelated transactions, he may sell tangible personal property to the same client. In such cases the decorator's fee cannot be considered as a part of the selling price of the property sold because there is no connection between the transactions.

4. If the decorator's client reimburses the decorator for the payroll cost of personnel on the decorator's payroll assigned to a specific project, the duties performed by such employees will determine whether or not this item is taxable. For example, if these employees were engaged in painting murals on walls, etc., the charge made for their services is exempt, whereas, if these employees fabricate tangible personal property such as making bedspreads or draperies then the charge for their labor is taxable.

(d) When an architect or engineer furnishes his client or customer with a scale, working, or other model, the total amount he charges his customer therefor is taxable. This constitutes the sale of tangible personal property and is not exempt as an inconsequential element of a personal service transaction.

(e) The taking of dictation by a public stenographer and stenographic transcriptions thereof are exempt as professional services. Charges for attendance and the stenographic recordings of proceedings at a trial, hearing, conference, or similar function by a court reporter are exempt as professional services. Charges made by court reporters for transcripts of proceedings are likewise exempt as professional services when furnished to parties to the proceedings. Charges for transcripts to third persons who are not parties to the proceedings for which the reporter was engaged are taxable. (See Rules 12A-1.062 and 12A-1.072.)

(18) WATER MINERALS. The sale of drinking water, including bottled drinking water, distilled water and waters containing minerals or carbonation in their natural state is exempt. (See Rule 12A-1.019).

(19) GUIDE DOGS FOR THE BLIND. A blind person who holds a consumer's certificate of exemption issued by the Executive Director or his designee in the responsible division may purchase or rent a guide dog and purchase food or other items for the guide dog without payment of the tax at the time of purchase. The exemption shall not be allowed unless the blind purchaser or lessee shall produce at the time of purchase or lease the consumer's certificate of exemption and the dealer shall record the name, address, and identification card number of the purchaser or less on the invoice or other written evidence of the sale. The Executive Director or his designee in the responsible division will issue, without charge, the consumer's certificate of exemption upon application by any blind person who either owns, rents, or contemplates the ownership of a guide dog for the blind and who holds an identification card as provided in Section 413.091, Florida Statutes.

(20) FLAGS. The sale of the United States flag or the official state flag of Florida is exempt. The sale of a kit as a unit which includes the flag of the United States or the official flag of Florida and related accessories, such as a mounting bracket, a standard, a halyard and instructions on the display of the flag is also exempt. The sale of any accessories, when not sold as a part of a kit containing a flag, is taxable.

(21) ARTIFICIAL COMMEMORATIVE FLOWERS. The sale of artificial commemorative flowers by a bona fide nationally chartered veterans' organization is exempt.

(22) FEED FOR HORSES. The sale of feed for all horses is exempt. (See Rule 12A-1.050(1), F.A.C.)

(23)(a) Resource recovery equipment and machinery used in a facility owned and operated exclusively by or on behalf of any county or municipality is exempt. To qualify for exemption such equipment and machinery must:

1. be certified as resource recovery equipment or machinery by the Department of Environmental Regulation under Section 403.715, Florida Statutes;

2. be owned or operated by or on behalf of a county or municipality.

(b) A temporary exemption shall apply only to the resource recovery equipment specified in the written preliminary examination report delivered to the Executive Director or her designee in the responsible division by the Department of Environmental Regulation. This exemption shall be final, contingent upon final examination and certification of the resource recovery equipment by the Department of Environmental Regulation. In the event the Department of Environmental Regulation does not issue a written decision granting or denying certification within 30 months from the date the preliminary examination report is received, the Executive Director or her designee in the responsible division shall determine an amount sufficient to secure payment of any tax, penalty, and interest which may be due or which may become due in the event the Department of Environmental Regulation denies certification and shall require a cash deposit, bond, or other security be issued to the Executive Director in such amount, unless the county or municipality for which the facility is being constructed executes a guarantee in favor of the Executive Director, the effect of which is to secure payment of any tax, penalty, and interest which may become due by the party directly liable to the Department for the tax.

(c) Persons claiming exemption from payment of tax on resource recovery equipment shall submit a copy of the preliminary examination report issued by the Department of Environmental Regulation with an application for a dealer's certificate of registration to the Executive Director or her designee in the responsible division. Upon approval of the application the Executive Director or her designee in the responsible division shall issue a certificate of registration authorizing the tax exempt purchase of those items identified by the Department of Environmental Regulation as possible resource recovery equipment. The applicant shall file a monthly report with the Department of Revenue and pay tax on any items purchased tax exempt which have not been identified by the Department of Environmental Regulation as possible resource recovery equipment in the preliminary examination report, or have been determined not to be resource recovery equipment following final examination and certification by the Department of Environmental Regulation. Upon completion of the project and final certification by the Department of Environmental Regulation, the applicant shall forward to the Department of Revenue his certificate of registration with any outstanding sales and use taxes due.

(24) Effective July 1, 1987, the retail sale, rental, use, consumption, distribution, or storage for use or consumption of a solar energy system or any component thereof is taxable. See Rule 12A-1.051, F.A.C.

(25) CERTAIN ENERGY EFFICIENT DEVICES, SYSTEMS, AND COMPONENTS. All sales and use tax exemptions for energy efficient devices, systems, and components; i.e., certain residential central air conditioning systems, heat pumps, water heating systems, compressor/condenser replacements expired on June 30, 1985, and such devices, systems, and components became taxable on July 1, 1985.

(26)(a) SPORTING EQUIPMENT. Sporting equipment brought into Florida, for a period of not more than 4 months in any calendar year, used by an athletic team or an individual athlete in a sporting event or series of sporting events is exempt from the use tax if such equipment is removed from the state within 7 days after the completion of the sporting event or a series of sporting events.

1. Example: A major league professional baseball team brings sporting equipment into Florida early in a calendar year for spring training and exhibition games, and keeps the equipment in the state for two and one-half months, and removes it from the state within 7 days after the last of the series of exhibition games. The sporting equipment is exempt from use tax, since it was in the state less than 4 months during the year, and was removed within 7 days after the last of a series of sporting events.

2. Example: A race car is brought into Florida for racing purposes. It is in the state for less than 4 months in a calendar year. The race car is exempt from use tax if the race car is removed from the state within 7 days after completion of the racing event.

(b) The exemption authorized, pursuant to s. 212.08(7)(x), F.S., as created by Chapter 87-548, L.O.F., is a use tax exemption, not a sales tax exemption.

(27) Recycling Machinery and Equipment. The sale, rental, or use of recycling machinery and equipment is exempt when all of the requirements of paragraphs (a) through (g) are met. This exemption shall inure to the taxpayer only by a refund of previously paid taxes.

(a) The machinery and equipment is "section 38 property", as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, as amended.

(b) The machinery and equipment, including parts and accessories, is integral to the manufacturing, processing, compounding, or producing for sale items of tangible personal property. For purposes of this exemption, "integral to" means that the machinery and equipment provides a significant function in the recycling process, such that the recycling process could not proceed without that piece of machinery or equipment.

(c) The machinery and equipment is not purchased or used by an electric utility company, a communications company, a phosphate or other solid minerals severance, mining, or processing operation, an oil or gas exploration or production operation, a printing or publishing firm, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation, or any firm that does not manufacture, process, compound, or produce for sale items of tangible personal property.

(d) The Department of Environmental Regulation has certified that:

1. The machinery and equipment is integral to recycling, which is defined as any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

2. The machinery and equipment is expressly designed to utilize recyclable materials in manufacturing, processing, compounding, or producing for sale items of tangible personal property; and

3. The machinery and equipment is directly used to increase consumption of Florida-source recyclable materials.

(e) The sale or lease transaction was completed after July 1, 1988, and before October 1, 1991. In the case of a sale of machinery and equipment, the sales invoice will be the controlling document for determining whether the machinery and equipment qualifies for the exemption. In the case of a rental, lease, or license to use qualifying machinery and equipment, only those payments made under agreements entered into after July 1, 1988, and before October 1, 1991, will be eligible for this exemption and only to the extent that the payments under such agreements are obligated to be made on or before September 30, 1991.

(f) The machinery and equipment is directly used to increase the consumption by the taxpayer at a fixed location and the taxpayer has certified to the Department that consumption of Florida-source recyclable materials has increased by not less than 10 percent at that single location. In the case of two or more entities who are members of an affiliated group of corporations, as defined in s. 1504(a) of the Internal Revenue Code, operating at a single location, the exemption will apply only if the combined consumption of Florida-source recyclable materials at that location has increased by not less than 10 percent.

1.a. An increase in consumption will be deemed to have occurred only if the taxpayer certifies to the Department that as a direct result of the use of the machinery or equipment, consumption of a specific type of Florida-source recyclable materials at a fixed location increased by not less than 10 percent during the continuous 12-month period after completion of the expansion project compared with such consumption during the 12 continuous months immediately preceding the beginning of the expansion project.

b. However, if a different continuous 12-month period would more accurately reflect the increase in consumption of Florida-source recyclable materials as a result of the use of the machinery and equipment, the increase in consumption may be measured during an alternate continuous 12-month period provided that prior to the start-up of such machinery and equipment the Department agrees to such alternate measuring period. Such alternate continuous 12-month measuring period approved by the Department must begin within 24 months following the start-up of qualifying machinery and equipment. If an alternate 12-month measuring period is requested by the business entity and is agreed to by the Department, then only the selected alternate 12-month period will be used to measure the increased consumption as a result of the use of the machinery and equipment, even though some other 12-month period may show a consumption increase of 10 percent or more.

c. If the taxpayer's business did not consume a specific type of Florida-source recyclable material before beginning operation of the recycling machinery and equipment, any consumption of that specific type thereafter will be deemed to be more than a ten percent increase.

d. Any reasonable measure of the increase can be used, such as the number of units of a particular type of recyclable material, or the weight (pounds, tons, or gross tons) of a particular type of such material. Cost of recyclable materials cannot be used as a measure.

2. Consumption of recyclable materials is the completion of the process of transforming such materials into tangible personal property for sale. Only the portion of recyclable materials that is incorporated into and becomes a physical component of the finishing product, and that which must necessarily be lost in the consumption process (such as shavings, chips, scrap, etc.) are deemed consumed for purposes of this rule. The Florida-source recyclable materials must be transformed into items of tangible personal property for sale in order to qualify as consumption for purposes of this rule. For the purpose of this provision, recyclable materials themselves may constitute finished products.

3. The qualifying machinery and equipment is that which is directly used to increase the consumption of Florida-source recyclable materials at a fixed location in Florida, excluding motor vehicles as defined in Section 320.01(1)(a), F.S. For purposes of this subsection, "at a fixed location" means permanently affixed to one location or plant site and includes any portable machinery or equipment which is set-up for a period of not less than 6 continuous months in a stationary manner so as to perform the same industrial manufacturing, processing, compounding, or production process that could be performed at a permanent location or plant site.

4. "Florida-source recyclable materials",

for purposes of this exemption, are those which have been recovered from the Florida solid waste stream and are physically located in Florida at the time they are purchased, contracted to be purchased, or otherwise acquired by the taxpayer.

(g)1.a. For purposes of this exemption, the taxpayer, who is eligible to claim a refund of previously paid taxes, is the person who previously paid the tax on the sale, lease, or use of the machinery and equipment and who has certified to the Department that he has used the machinery and equipment to increase the consumption of Florida-source recyclable materials by not less than 10 percent at a single location. Before a taxpayer may request a refund of sales or use taxes paid to a supplier on qualifying machinery, equipment, or parts thereof, the taxpayer must obtain a certified statement from the supplier that the supplier has remitted the tax to the State, or certify that the taxpayer has remitted use tax directly to the State. The Department will waive the requirement for the certification from the vendor to the taxpayer if the taxpayer purchased or leased qualifying machinery and equipment prior to October 16, 1989, the effective date of this rule.

b. In the case of a contractor who has installed recycling machinery and equipment under a lump sum, cost plus, fixed fee, or upset or guaranteed price contract, and has paid the tax as required by paragraphs (a), (b), or (c) of Rule 12A-1.051(2), F.A.C., the contractor is not the taxpayer for purposes of this exemption, since the contractor does not use the machinery and equipment to increase consumption of recyclable materials. Before a taxpayer may request a refund of sales or use taxes paid by his contractor on qualifying machinery, equipment, or parts thereof, the contractor must first have obtained a certified statement from the supplier that the supplier has remitted the tax to the State, or certify that the contractor has remitted use tax directly to the State. The contractor must then extend the certification(s) to the taxpayer.

c. The following is a suggested certified statement that tax has been remitted to the State of Florida:

COMPANY, incorporated in the state of STATE, its undersigned officer who is duly authorized, hereby certifies to TAXPAYER (RECYCLER) OR CONTRACTOR it has paid sales tax to the Department of Revenue, State of Florida, totaling the sum of \$ _____ Dollars on transactions completed on or after July 2, 1988, and before October 1, 1991. Said taxes were collected by COMPANY upon the sales of tangible personal property as evidenced by the attached invoices.

The company further certifies the sales tax for the attached invoice(s) was paid to the State of Florida in the month following the date of sale under sales tax number _____. Dated at _____ County _____, Florida, this _____ day of _____, 19____. AUTHORIZED OFFICER OF COMPANY BY: _____ TITLE: _____

2. The taxpayer is eligible for a refund one year after completion of the expansion project provided that the machinery and equipment has been in operation for at least one year. Application for refund must be made no later than three years after the taxpayer is eligible for a refund.

3. In support of a claim for refund, the taxpayer must present to the Department:

a. An application for Refund from the State of Florida Department of Revenue, (DR-26), effective December, 1989, hereby incorporated by reference, signed by the applicant or its representative, certifying to the validity of the application for refund. Applications for Refund are available, without cost, upon written request directed to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100;

b. A certificate from the Department of Environmental Regulation embodying that Department's determinations described in paragraph (d);

c. Certification(s) as required under (g)1., above, which establishes that the tax has been remitted to the State by the supplier, the contractor, or if the taxpayer paid use tax, certification that the taxpayer self-accrued and paid the use tax;

d. A photocopy of all invoices for recycling machinery and equipment which was certified as industrial recycling machinery and equipment by the Department of Environmental Regulation, regardless of whether sales tax was paid to the vendor or self-accrued and remitted directly to the State by the contractor or by the taxpayer; and

e. Certification by the taxpayer that the machinery and equipment was purchased or leased after July 1, 1988, but before October 1, 1991; that it was purchased or leased for use in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property; and that it was used by the taxpayer at a single location to increase consumption of Florida-source recyclable material, as a direct result of the use of the machinery and equipment, by not less than 10 percent during the continuous 12-month period after it was first put into operation, or during an alternate continuous 12-month period if agreed to by the Department.

4.a. No person shall knowingly make a false or fraudulent statement in an application for a refund, fraudulently obtain a refund of taxes, or knowingly aid or assist in making any such false or fraudulent statement or claim.

b. Any person who commits one or more of such fraudulent acts shall, in addition to being liable for payment of the tax plus a mandatory penalty of 100 percent of the tax, be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

5. When the taxpayer who qualifies for the exemption under this subsection has gained possession and control of the machinery or equipment by a lease that requires periodic lease payments, each of which is taxable, the taxpayer may file its first claim for refund following the first full year in which the machinery or equipment is in operation, covering some or all of the taxes paid by it during the first year of operation, and may thereafter, at quarterly intervals, file

claims for refund of taxes not previously refunded; but no such subsequent claim for refund may be filed with reference to any tax paid on or after October 1, 1991.

6. When the taxpayer's claim for refund under this rule has been approved, the amount refunded will be the amount of tax paid by the taxpayer.

(h) The exemption for recycling machinery and equipment shall expire and be void on October 1, 1991; and no such machinery and equipment purchased, leased, or put to its first use on or after that date shall be exempt unless eligible for some other exemption. However, a claim for refund may be filed on or after that date where the purchase, lease, or first use of the machinery or equipment was before October 1, 1991, and will be allowed if found to meet the requirements for this exemption.

(i) A sale or use of machinery or equipment that fails to qualify for the exemption provided in this subsection may qualify for some other exemption, such as for the exemption for resource recovery equipment and machinery, provided by s. 212.08(7)(p), F.S.; the exemption for certain machinery and equipment purchased by a new business, provided by s. 212.08(5)(b)1., F.S.; the exemption for certain machinery and equipment purchased to expand operations, provided by s. 212.08(5)(b)2., F.S.; the exemption for machinery and equipment used in production of electrical or steam energy, provided by s. 212.08(5)(c), F.S.; or the exemption for machinery and equipment used under a federal procurement contract, provided by s. 212.08(5)(d), F.S., is a use tax exemption, not a sales tax exemption.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10), (12), (16), (20), 212.03, 212.031, 212.04, 212.05, 212.0515, 212.06(2), (9), 212.08(4), (5)(a)(e), (6), (7)(a)(b)(c)(d)(f)(g)(h)(i)(k)(l)(m)(n)

(o)(p)(q)(r)(s)(u)(v)(x), (8), 212.17, 212.18, 213.12(2), 240.533(4)(c) 403.715 FS. History—Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 12-11-74, 5-27-75, 10-21-75, 9-7-78, 9-28-78, 10-18-78, 9-16-79, 2-3-80, 6-3-80, 7-7-80, 10-29-81, 12-3-81, 12-31-81, 7-20-82, 11-15-82, 10-13-83, 4-12-84, Formerly 12A-1.01, Amended 7-9-86, 1-2-89, 12-1-89, 7-7-92.